SIGNIFICANT COURT CASES

Bulkmatic Trans. Co. v. Department of State Revenue
715 N.E. 2d 26 (Ind. Tax 1999)

Bulkmatic Transport Co. and 59 other petitioners challenged the constitutionality of the "in Indiana" limitation on the proportional use exemption from Indiana's motor carrier fuel tax and motor carrier fuel surcharge tax. The Indiana General Assembly exempted fuel used in operations while in Indiana other than roadway locomotion from the motor carrier fuel tax. However, because the exemption only applied to non-locomotive operations occurring inside Indiana, the petitioners argued that this discrimination against non-Indiana commerce was in direct violation of the Commerce Clause. The Department, in trying to establish the constitutionality of the "in Indiana" limitation, presented to the court four main arguments. First, the Department asserted, fuel used in non-locomotive operations outside Indiana was not subject to motor carrier fuel tax; as a result, the Department did not have to exempt fuel not apportioned to Indiana in the first place. Second, discrimination cannot be said to have occurred because everybody using Indiana highways, regardless of the extent, was taxed at the same rate. Third, because the motor fuel eligible for exemption had already been apportioned to Indiana, there was no relation between the exemption's application and interstate commerce. Finally, the Department claimed, even if the "in Indiana" limitation was unconstitutional, the Court had no power to order refunds because there was no statutory authority to do so. The Tax Court found none of these arguments convincing, holding that a scheme proposing equal treatment of taxpayers is not inherently nondiscriminatory; the tax had the effect where motor carriers with non-locomotive operations within Indiana simply paid less tax than those with non-locomotive operations outside Indiana, which itself is discriminatory. Furthermore, the Court added, the suggestion that the Department should do nothing in the face of an unconstitutional statute it previously enforced goes against constitutional due process requirements. Where a post-deprivation remedy is available, the Court stated, one must be entitled to "meaningful, backward-looking relief," which, in this case, would be the Department putting the petitioners in the same position they would have been (if the discrimination had not occurred) relative to those who received favorable treatment. Therefore, the Court, holding that the "in Indiana" limitation violated the Commerce Clause, granted partial summary judgment on behalf of the petitioners.

Richard C. Mynsberge d/b/a RCM Rentals v. Department of State Revenue
716 N.E.2d 629 (Ind. Tax 1999)

The Department issued a final determination denying Mynsberge's refund claim for sales tax paid on purchases of electricity that were resold to a lessee. Mynsberge filed an original tax appeal, and both parties moved for summary judgment. Mynsberge leases buildings and equipment to Coppes Nappanee, a manufacturer of kitchen cabinets. In addition to monthly lease payments, Coppes pays a flat monthly fee to Mynsberge for electricity that is used primarily for Coppes' manufacturing business. Mynsberge argued that his purchases of electricity from Northern Indiana Public Service Company (NIPSCO) do not constitute retail transactions because he did not consume the electricity himself; rather, he resells the electricity to Coppes. In the alternative he contended that if the purchases are retail transactions, they are exempt from gross retail tax under IC 6-2.5-5-8. The Court found that (1) Mynsberge's purchase of electricity was a retail transaction subject to gross retail tax under IC 6-2.5-4-5, and (2) the purchases were not exempt under IC 6-2.5-5-8. The Court determined Mynsberge's purchase of electricity was not exempt under IC 6-2.5-5-8 because electricity is not "tangible personal property," so Mynsberge's resale of the electricity to Coppes did not bring the original transaction within the statutory exemption.

Uniden America Corporation v. Indiana Department of State Revenue
718 N.E.2d 821 (Ind. Tax 1999)

Uniden appealed the Department's Letter of Findings denying Uniden's protest of the Department's proposed assessment of Indiana gross income tax to Uniden's Indiana destination sales. Uniden filed a motion for partial summary judgment, and the Department filed a cross-claim for summary judgment. Uniden sells and distributes consumer and commercial electronic products such as cellular telephones, pagers, two-way radios, cordless telephones, and marine radios. Uniden was incorporated in the state of Indiana, but its headquarters and commercial domicile are in Texas. The issue in this case was whether certain interstate sales, Indiana destination sales, of Uniden's products were subject to gross income tax. Orders for these products were placed by mail or fax to the Texas office; Uniden has no physical sales presence in Indiana. Once the orders were processed, the products were shipped to the customer from Uniden's warehouse in Texas. The Court found that the gross receipts generated by Uniden's Indiana destination sales were excluded from gross income under IC 6-

2.1-1-2(c)(6) due to the fact that these sales did not originate from, were not channeled through, and were not otherwise associated with or facilitated by any Indiana situs of Uniden. In determining whether income is derived from an Indiana situs, the Court applied the three-part test established in Indiana-Kentucky Electric Corporation v. Indiana Department of State Revenue, 598 N.E.2d 647, 663 (Ind. Tax 1992).

Policy Management Systems Corporation v. Indiana Department of State Revenue
720 N.E.2d 20 (Ind. Tax 1999)

Policy Management Systems Corporation (PMSC) filed this appeal to challenge the Department's final determination finding that PMSC owed certain gross income taxes for the retrieval and transmittal of motor vehicle reports (MVRs) to its customers. The issue was whether the amounts received by PMSC from its customers as reimbursement for advances PMSC made on behalf of the customers to various state agencies in order to obtain MVRs were subject to the state gross income tax. PMSC is incorporated and maintains its principal offices in South Carolina, but did also maintain a service office in Indianapolis. PMSC provides goods, information, and services to insurance companies. One of its services is the retrieval and transmittal of MVRs. The Court looked to the Department's regulation 45 IAC 1-1-54 that recognizes the non-taxability of agents' receipts. 45 IAC 1-1-54 sets forth two requirements that must be met in order to qualify for the exemption from the gross income tax. The Court found that PMSC acted as an agent for its customers insofar as processing the MVR requests are concerned by considering the actual terms of the processing agreements and the conduct of PMSC and its customers. The Court also found that the reimbursements were truly advances by PMSC to third parties on behalf of its customers because PMSC lacked a beneficial interest in the reimbursements. Having found that PMSC met both requirements, the Court concluded that the receipts from customers for the retrieval and transmittal of the MVRs were not subject to the gross income tax.

Muncie Novelty Co. v. Department of State Revenue
720 N.E.2d 779 (Ind. Tax 1999)

The Department determined that Muncie Novelty (MN) owed Gaming Card Excise Tax (GCET) and in addition levied a civil penalty against it for failure to keep adequate records. MN filed an appeal in response to the Department's final determination. Two issues were presented to the Court for discussion: (1) whether the Department properly assessed GCET when MN did not identify organizations as qualified or non-qualified; and, (2) whether the Department properly assessed MN with a civil penalty for failure to keep adequate records of its sales of gaming items. MN is headquartered in Muncie, Indiana, and manufactures and distributes pull-tabs, punch boards and tip boards, which are shipped around the country. Qualified organizations in Indiana (as defined by 45 IAC 4-32-6-20) can obtain licenses for charity gaming events under the Charity Gaming Act. Qualified organizations are required to purchase their gambling devices from a licensed supplier like MN and are subject to the 10% GCET (IC 4-32-15-1). Non-qualified organizations that purchase gambling devices from MN are charged the 5% sales tax. Some of MN's customers preferred to pay cash and remain anonymous. MN did not retain the required information on these cash-paying customers as directed by 45 IAC 18-4-2(a)(1)(B). Because of this lack of information on cash-paying customers and the ease with which MN could have identified these customers as qualified or non-qualified, the Court found that it was reasonable for the Department to assume all unidentified customers were qualified and owed the 10% CGET. The Court also found that the $5,000 civil penalty levied against MN was reasonable in light of the fact that MN had the ability to comply with the record-keeping requirements of the regulations, but chose not to do so.

Keith and Mary Hall v. Department of State Revenue
720 N.E. 2d 1287 (Ind. Tax 1999)

On remand from the Supreme Court, taxpayers moved to dismiss the $11,382,640.00 controlled substance excise tax (CSET) assessment made by Department for 142,283 grams of marijuana found in their home by law enforcement officers. The Halls were both arrested and an assessment for the unpaid CSET was made; Keith Hall was charged and later convicted of Class D Felony marijuana possession, whereas all charges against Mary Hall were dropped. The Halls argued that the CSET violated the Double Jeopardy clause; the Supreme Court disagreed, stating that because the assessment came before the criminal charges, it did not fall under the purview of the constitutional provision against double jeopardy in criminal cases. After the case was remanded to the Tax Court, the Tax Court found, due to Hall's own admission and discussion at trial, there was no question of Keith Hall's possession of the marijuana on which the CSET was based. However, the Court stated, the evidence offered at trial was insufficient to establish Mary Hall's constructive or actual possession of the marijuana seized from the Hall's home. The Tax Court affirmed the Department's decision against Keith Hall but reversed its decision against Mary Hall, holding that though the CSET was correctly assessed against Keith Hall, who

admitted possessing the marijuana, Mary Hall lacked the intent and ability to exercise dominion and control over the marijuana, and thus was not in actual or constructive possession, as required before the Department may assess CSET.

Gary G. Hurst v. Department of State Revenue
721 N.E. 2d 370 (Ind. Tax 1999)

Defendant, Gary Hurst, sought to have Tax Court vacate the $2,470,952.00 controlled substance excise tax (CSET) levied against him by the Department, arguing that facts of the case did not place him within the purview of the CSET statute. The CSET was based upon a shipment of marijuana in a rental truck, which was allegedly en route to Hurst's residence prior to being seized by Indiana State Police. Hurst argued that because law enforcement officials intercepted the marijuana before any attempt was made to deliver it to him, he never actually possessed the controlled substance upon which the CSET was levied. The Department argued that since constructive possession is the only requirement to impute liability under the CSET, Hurst's activities prior to the seizure and interview after his arrest established the requisite level of possession to warrant the CSET. But because the Indiana State Police never elicited from Hurst that he, in fact, knew the truck contained marijuana, or that he had the intent or ability to exercise dominion and control over the truck's contents once it arrived at his residence, the Tax Court disagreed with the Department's position. Holding that Hurst's liability under the CSET was not sufficiently established due to the quick action conduct of the Indiana State Police in arresting him before he actually possessed the marijuana shipment, the Tax Court reversed the Department's previous determination.

Rockland R. Snyder v. Indiana Department of State Revenue
723 N.E. 2d 487 (Ind. Tax 2000)

Snyder appealed the final determination of the Department denying his protest challenging the constitutionality of Indiana's adjusted gross income tax, arguing that, for purposes of calculating Indiana's adjusted gross income tax, wages are not income. An Indiana resident, Snyder filed individual income tax returns for the years protested, noting in each return that though he received wages for his services those services did not constitute income. After the Department's denial of his protest, Snyder argued before the Tax Court that because Indiana has adopted the definition of gross income used in the Internal Revenue Code, which includes "wages" as a source of income but not "income" specifically, the tax is unconstitutional. The Tax Court found Snyder's position and misplaced reliance on factually distinguishable cases to be without merit, stating "the constitutional legitimacy of the general assembly's decision to tax income is beyond dispute. The right to tax is a crucial attribute of sovereignty." The Court further held that, because even the cases Snyder relied on for his argument recognize Congress' constitutional right to tax income without reference to the income's source, Snyder's contention that sources of income may not be taxed was fatally flawed. Finding that, as a matter of law, Snyder's wages were subject to the gross income tax, the Court denied Snyder's motion for summary judgment. Because Snyder failed to demonstrate entitlement to any relief, the Court, in addition to granting the Department's cross motion for summary judgment, affirmed the Department's final determination denying Snyder's protest.

Owner-Operator Independent Drivers Association v. State of Indiana
725 N.E. 2d 891 (Ind. App. 2000)

In an appeal from the Marion County Circuit Court, Appellants (Owner-Operator Independent Drivers Association, Raymond Kasicki, and Marino Motor Services, Inc.) challenged both the trial court's dismissal of its complaint and the constitutionality of the Indiana Motor Carrier Fuel Tax imposed on commercial vehicles. Appellants (out-of-state commercial motor carriers taxed for fuel used based upon mileage accrued on Indiana highways) contended that fuel consumed on the Indiana Toll Road should be tax exempt, claiming that the International Fuel Tax Agreement (IFTA) precluded them from having to remit the tax to the Department. The IFTA was intended to enable carriers operating in multiple states to file a consolidated tax return with a "base state," which would then distribute the tax remitted to the other states in which the carriers operate. The Department argued that because (a) Appellants failed to exhaust their administrative remedies prior to filing its complaint with the trial court, and (b) only the Tax Court would have jurisdiction over such a case, their complaint must be dismissed for lack of subject matter jurisdiction. Appellants argued in appeal of this decision that: (a) administrative remedies were unavailable to them because they did not file a tax return in Indiana; (b) the administrative requirements of the fuel tax law were waived when Indiana joined the IFTA; (c) the administrative requirements unfairly deter class action suits for tax refunds. The Court of Appeals, however, disagreed with all three of the Appellants' positions, affirming the judgment of the trial court that no court has subject matter jurisdiction over the case until Appellants exhaust their administrative remedies.

Wabash, Inc. v. Department of State Revenue
729 N.E.2d 620 (Ind. Tax 2000)

Wabash filed this appeal from a final determination by the Department finding that Wabash should not have included its parent company, Kearney-National, Inc. (KN) on its consolidated tax return. In addition, the Department raised the issue of whether the apportionment method used by Wabash in calculating its taxes was correct. Wabash is a manufacturing corporation located in Wabash, Indiana. It is a wholly owned subsidiary under the corporate umbrella of KN. KN had acquired a competitor, Coto Corporation (Coto), located in Rhode Island. In order to facilitate this acquisition, KN appointed Michael Carper, the general manager of Wabash, to head the transition. Wabash's operations were to be moved from Indiana to Rhode Island. While working on this project, Carper became a full-time employee of KN. The Court found that KN did sufficient business in Indiana as defined by 45 IAC 3.1-1-38(7) and had Indiana-sourced income under IC 6-3-2-2. Since KN had sufficient Indiana-sourced income, it could be included in Wabash's return under IC 6-3-4-14. The Court also found that the standard three-factor apportionment formula employed by Wabash in calculating its taxes was correct. The Court looked to the United States Supreme Court's statement that the standard formula has become a benchmark against which other apportionment formulas are judged. The Court also looked to the Department's own regulations, 45 IAC 3.1-37,-45, that recognize the standard formula as the most accepted and recognized method of computing a company's taxes.

Crossno v. State
726 N.E.2d 375 (Ind. App. 2000)

This decision handed down by the Court of Appeals affirms a partial grant of summary judgment for the State. In so doing, the Court holds that the Department is immune from liability for claims arising out of the issuance of an oversize/overweight permit, specifically negligent training and supervision, as well as failure to maintain accurate reference maps and failure to disclaim responsibility for reference map accuracy.